



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

September 7, 2004

Jack and Diana Jensen
Rt 1, Box 32
Moore, Idaho, 83255

Trent Smith
4103 N 3600 W
Moore, ID 83255

CERTIFIED MAIL

**Re: Notice of Violation of Idaho Code Section 42-351
Order to Cease and Desist Illegal Diversion**

Dear Gentlemen,

The Idaho Department of Water Resources ("Department") has determined that you are in violation of Idaho Code §42-351. The violation is associated with the use of water right 34-372A during 2004 for irrigation of lands that are not described as the place of use under this right. On July 23, 2004, the Department issued an Order To Show Cause why Jack and Diana Jensen ("Jensen") and their lessee of water right 34-372A, Trent Smith ("Smith"), should not be subject to a Department notice of violation and order to cease and desist the illegal use of water. The Show Cause Order set a hearing for this matter on August 2, 2004, 9:00 a.m., at the Mackay High School Auditorium in Mackay, ID.

At the hearing on August 2nd, Smith acknowledged that Jensen's water right 34-372A was used during 2004 in combination with other water rights and sources of water owned by Smith to irrigate a center pivot sprinkler system located on land different than the place of use authorized by water right 34-372A. Smith stated that right 34-372A was used the entire season to irrigate his center pivot and was not used at all at the Jensen place of use where right 34-372A is appurtenant. Smith stated that Jensen's supplemental well was used as the primary water source to irrigate the Jensen property. Smith explained that several different priority water rights from the Big Lost River and storage water from the Big Lost River Irrigation District ("BLRID") is normally used to irrigate his land with the center pivot. As per Smith's description and additional information obtained by the BLRID, the Department's records indicate that the land to which right 34-372A was illegally used are located in the W1/2SW1/4 of Section 8 and the E1/2SE1/4 of Section 7, T 4N, R26E. The water rights that are appurtenant to this land are 34-259C (5/20/1884 priority), 34-377C (6/1/1885 priority), 34-379 (6/1/1880 priority), 34-738B (6/30/1891 priority) and 34-925A (2/1/1893 priority), plus about 2000 inches of storage water. These rights also include about 37 acres in the SWNW of Section 8, T4N, R26E. Smith further explained that right 34-372A was combined with his storage water and these other decreed rights, to the extent they were deliverable, in order to provide an adequate supply of water to his pivot in Sections 7 and 8, T4N R26E.

The irrigation of the Smith pivot located in Sections 7 and 8, Township 4 North, Range 26 East, constitutes a violation of I.C. §42-351, illegal diversion of water without a water right. You are hereby ordered to **CEASE and DESIST** any further diversion of water under water right no. 34-372A for irrigation of the lands described above.

Under Idaho Code, Section 42-1701B, the director of IDWR may commence an administrative enforcement action to obtain a remedy for a violation and seek a civil penalty for irrigation use equal to three hundred dollars (\$300) annually for each acre irrigated, in whole or in part, for water illegally used or diverted.

Pursuant to Idaho Code, Section 42-1701B(5)b, IDWR requires that the following action be taken:

1. You must **CEASE and DESIST** any further use of water rights that are not appurtenant to the lands that Smith owns or irrigates in Sections 7 and 8, T 4N, R 26E. Water right 34-372A must be used on the land to which it is appurtenant, unless a water right transfer, temporary change, or other authorization is approved by the Department.
2. Pay an agreed civil penalty in the amount of one hundred fifty dollars (\$150) for the illegal diversion of water that was acknowledged by Jensen and Smith at the Department's show cause hearing held on August 2, 2004, in Mackay. The civil penalty shall be due and payable to IDWR no later than September 30, 2004.

If you object to any provision in this notice, you have the opportunity to schedule a compliance conference to discuss the violation with IDWR. Your written request must be received at this office within 14 days of receipt of this notice. Failure to comply with the requirements of this notice will be cause for IDWR to initiate a civil enforcement action through the Attorney General in district court. If you have questions concerning this matter please contact me directly at (208) 327-7864.

Respectfully,



Tim Luke

Manager, Water Distribution Section

cc: Gary Spackman, IDWR Water Allocations Bureau Chief
IDWR Eastern Region
Bob Duke, Water District 34 Watermaster